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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1121 OF 2007

Sangli Urban Co-op. Bank Ltd. ... Petitioners

V/s

Bank Employees Union ... Respondent

Mrs. Meena H. Doshi for the petitioners.

Mr. Nitin Kulkarni for the respondent.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 16TH JULY, 2007.

P.C.:

1. The petitioner challenges the award dated 17.10.2006 passed by the Industrial Tribunal, Sangli, in which the respondent Union has been granted certain demands. The Tribunal has granted the demands relating to the pay scale, adjustments, dearness allowance, house rent allowance, etc. The award has been made effective retrospectively i.e. from 1.3.1990. The Tribunal has also directed that the amounts paid to the workman under interim award shall be adjusted. The Tribunal has further clarified that, if any amount has been paid in excess to any workman, such amount shall not be recovered by the petitioner Bank.

2. The learned advocate for the petitioners contends that although there was a ceiling on dearness allowance, the respondent Union did not raise any demand for lifting the ceiling and has merely demanded a revision in the dearness allowance. This submission of the learned advocate cannot be accepted. The demand for a rise in dearness allowance would itself indicate that the workmen have sought that the ceiling on the dearness allowance effective from 1986 onwards be removed. In my opinion, it would be too hyper-technical to suggest that there should first be a demand to lift the ceiling on dearness allowance and then another demand for a rise in the rate of dearness allowance payable to the employees.

3. The learned advocate for the petitioners has urged that the Tribunal has disregarded judgments of the Supreme Court while concluding that the onus of proving that the petitioner Bank did have the capacity to bear the financial burden cast on it. She further submitted that it was necessary for the Union to justify its demands and the onus could not be placed on the petitioner Bank. This submission of the learned advocate also cannot be accepted. There is no doubt that the Union must justify the demands raised by it. However, when the Tribunal considers the financial capacity of an employer which contends that it does not

have the capacity to bear the financial burden which could be cast on it if the demands are granted, it is for the employer to prove its inability. The onus squarely lies on him to prove that he does not have the financial capacity. The Tribunal has considered the financial capacity in para 44 of the Award. In para 44 of the Award, while considering the financial capacity which could be cast on the petitioner Bank, the Tribunal has observed thus -

> "44. From the aforesaid statement, it becomes clear that barring the two financial years viz. 1995-96 and 2004-2005, the second party Bank always earned excess income than expenditure and therefore earned gross profit. Only in 1995-1996, gross loss of 0.24 crore and in 2004-2005 gross loss of 4.31 crore was recorded. We do not have the reasons for recording gross loss in the year 1995-1996 because Annual report of that year it not produced on record. However, the Annual Report for the year 2004-2005 is produced at Exh.U-25 by the first party. The report of the Chairman published in the said report shows that despite successfully crossing several hurdles and overall improvement in the functioning of Bank, the Bank sustained loss because the Bank had to make provision for loss in respect of market value of the securities held by the Bank. This provision was required to be made from out of the profit made by the Bank. This was due to the mandate issued by Reserve Bank of India. It appears from the said report that the Second Party Bank did not actually sell the securities held by it at loss but the provision was required to be made only because market value of such securities declined than the value at which the securities were purchased. In the Annual Report of the year 2005-2006 produced by the management with list Exh.C-32, it is clearly mentioned that the Bank would have registered profit of 37 lakhs had it been not

> required to provided for Rs.4.50 crore for the purpose of decline in value of securities. In the Annual Report for the year 2003-2004 produced by the first party with list at Exh.U-31, it is clearly reported on page 14 of the said report that the Bank earned substantial profit of Rs.841 lakhs as compared to previous year profit of Rs.675 lakhs by sale and purchase of Government securities. It is therefore clear that the loss sustained by the Bank in two financial years is mainly due to sale and purchase of Government securities. Such loss is not on account of banking operations carried out by the Bank. On the contrary, it is evident from the reports produced in the Court that the percentage of N.P.A. has been brought down below 10% as per the directions of the Reserve Bank of India (See page No.15 of Annual Report of 2005-2006).
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> Thus, it can safely be said that the total income and gross profit of the Bank has been normally increasing and the two exceptions mentioned above are not due to loss in banking business but due to book adjustment on account of fall in the market value of the Government securities, for which provision was required to be made though such securities were not actually sold by the Bank. Thus, I have no hesitation to conclude that the Second Party Bank has been financially in sound position right from 1989-90 till today, for the purpose of considering the question of upward revision of service conditions."

4. Another submission of the learned advocate for the petitioner Bank is that, the Tribunal has drawn unnecessary comparions between the Sangli District Co-operative Bank Ltd. and the petitioner Bank. In my view, the comparison drawn by the Tribunal is apt. He has given cogent reasons for drawing the comparison with the Sangli District Co-operative Bank in para 54 of the Award.

5. The Award of the Tribunal need not be set aside on the basis of the submissions raised by the petitioner Bank except to the extent that para 9 of the operative portion of the Award must be modified. Para 9 reads thus:-

> "9. It is hereby clarified that if on account of implementation of this Award, is required to be recovered from any category of employees, such an employee shall be exempted from such recovery and no such amount shall be recovered from any such employees. This provision is made only for the purpose of this Award in view of the fact that this Reference has been pending for the last 16 years."

6. The Award of the Tribunal is modified to the extent that the petitioner Bank would be entitled to recover any amounts which are payable in excess of the Award during the pendency of the reference.

7. Petition rejected.

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